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Paper No. 32

In re Application of
William P. Apps
Application No. 09/780,073
Filed: February 9, 2001
Attorney Docket No. RPC 0557 PUS

DECISION ON PETITION

This is a decision on the petition filed by facsimile transmission on March 31, 2004 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned because the appeal has been dismissed due to the filing of an informal appeal brief. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

A review of the record shows that petitioner filed a substitute appeal brief on September 25, 2003 in response to the examiner's holding that the appeal brief filed on August 4, 2003 was defective in failing to satisfy all of the requirements of 37 CFR 1.192(c). The examiner has held the substitute appeal brief to be defective, and has, therefore, dismissed the appeal. As a result of the dismissal of the appeal, the examiner has held the application to have become abandoned because there are no allowed claim.

A review of the supplemental appeal brief shows that it is not defective as asserted by the examiner. On pages 5-6 of the supplemental appeal brief, petitioner has addressed the claims that are rejected as being anticipated by the Apps '925 patent and has stated that the claims that are rejected on that basis do not stand or fall together generally, but within those claims, has further indicated that certain claims do stand or fall together with certain other claims. Petitioner has provided arguments on pages 7-11 of the supplemental appeal brief in support of this position. That the examiner does not think that the arguments "are sufficient" is immaterial to compliance with the requirements of 37 CFR 1.192(c)(7) and 37 CFR 1.192(c)(8)(iii). The regulation requires presentation of arguments in support of the claim groupings, not presentation of arguments that the examiner finds either sufficient or persuasive.

As it appears that the examiner's action dated March 24, 2004 holding the supplemental appeal brief filed on September 25, 2003 to be defective was improper, it follows that the examiner's action in dismissing the appeal and holding the application abandoned was also improper. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application will be forwarded to the Supervisory Patent Examiner in Art Unit 3727 to instruct the examiner to take immediate action on the supplemental appeal brief. Such action cannot be inconsistent with this Decision.

PETITION GRANTED.

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Exhibit D